

however the case may be as between the petitioners and the Bank, the mortgagee, the question is a very different one between the petitioners and the Masons, for whom the machinery was made.

Assuming in this view that the machinery was a fixture, constituting a part of the freehold and covered by the mortgage to the Bank, it seems to me very clear that a purchaser from the Bank, whoever he may be, will stand clothed with the rights of the vendor, and that those rights, whatever they are, will not be affected by the nature of the dealings between this purchaser and a third party claiming in hostility to the Bank. The claim of the petitioners under the mechanics' lien law has been adjudged to be subordinate to the prior mortgage to the Bank, and when the Bank purchased at the trustee's sale it took the property wholly discharged from the lien of the petitioners, and a purchaser from it must take a title equally exempt from this lien.

If this be not so, the Bank may be deprived of the full benefit of its security. Having an unexceptionable title itself, it has a right to go into the market with that title and make the most of it, which it could not do if the person most likely to purchase must take the property subject to an incumbrance, which was of no avail against his vendor, 1 *Story's Eq.*, secs. 409, 410.

But in this case the title still remains in the Bank, and it is the only security which it holds for the unpaid portion of the purchase-money, and as against the Bank, unquestionably, if the former opinion of this Court is correct, the petitioners have no claim. Their petition must therefore be dismissed.

In discussing the question presented by the petition, the counsel for the petitioners not having heard the concluding argument made by the Bank's counsel at the former hearing, took occasion (and with entire propriety) to submit some remarks upon the subject of the lien claimed by his clients, under the mechanics' lien law.

There can be no doubt, that under the original Act of 1838, ch. 205, and its several supplements, the lien of the mechanic